

URGENCY ORDINANCE NO. 2353

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF SOUTH PASADENA
MAKING CERTAIN FINDINGS UNDER GOVERNMENT CODE SECTION 36937 AND
ADDING A NEW DIVISION 36.375 (INCLUSIONARY HOUSING REQUIREMENTS),
TO ARTICLE III (“SITE PLANNING AND GENERAL DEVELOPMENT
STANDARDS”) OF CHAPTER 36 (“ZONING”) OF THE CITY OF SOUTH
PASADENA MUNICIPAL CODE**

WHEREAS, On March 4, 2021, the Southern California Association of Governments (SCAG) finalized the new RHNA allocation numbers for the region, based on the State’s housing needs assessment. South Pasadena was assigned 2,067 units, which the City must show capacity to build in the 2021-2029 Housing Element; and

WHEREAS, the City is in the process of preparing its 6th cycle Housing Element (2021-2029) to include compliant housing opportunity sites analysis for potential development of housing to meet its needs assessment, housing constraints analysis and consideration of housing policies to promote affordable housing production; and

WHEREAS, inclusionary housing ordinances are specifically authorized by State law and are emerging as a key policy tool for cities in response to State housing legislation and very high housing needs assessments and allocations to cities for the upcoming housing element cycle; and

WHEREAS, given the lack of an inclusionary housing ordinance, the City has received mixed-use development proposals which did not include affordable housing units, thereby missing an opportunity to enhance much-needed affordable housing stock; and

WHEREAS, the City’s residents comprise over 50% renters, many of whom are rent-burdened, spending more than 30% of their gross income on rent—therefore, enhancing affordable housing stock is an immediate public health and safety concern for the City; and

WHEREAS, without the inclusionary housing ordinance, which automatically triggers state density bonus law for the increased production of housing, mixed-use and multi-family developers are significantly less likely to provide affordable housing as part of any development proposal; and

WHEREAS, given the potential that developers may attempt to submit incomplete applications or pre-applications under SB 330 in an attempt to avoid affordable housing development requirements of an inclusionary housing ordinance after adoption, but before its effective date, there is urgency in adopting such an ordinance to become effective immediately upon adoption, thus providing procedural certainty while enhancing the development potential for much-needed affordable housing stock in order to protect the public health and safety of the community; and

WHEREAS, the City Council has the power to enact an urgency ordinance, not in conflict with general laws, as necessary to protect public peace, health, and safety, via exercise of the powers provided to cities in Article XI, Section 7, of the California Constitution, and in compliance with Government Code section 36937.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. A new Division 36.375 (“Inclusionary Housing Requirements”) is added to Article III (“Site Planning and General Development Standards”) of Chapter 36 (“Zoning”) of the South Pasadena Municipal Code to read as follows:

“Division 36.375 Inclusionary Housing Requirements
Sections:

| | |
|------------|---|
| 36.375.010 | Purpose. |
| 36.375.020 | Applicability. |
| 36.375.030 | Exemptions. |
| 36.375.040 | Definitions. |
| 36.375.050 | Inclusionary unit requirement. |
| 36.375.060 | Alternatives to on-site provision. |
| 36.375.070 | Standards governing inclusionary units. |
| 36.375.080 | Streamlined state density bonus review |
| 36.375.090 | Application. |
| 36.375.100 | Conditions of approval. |
| 36.375.110 | In-lieu fee payment and administration |

36.375.010 Purpose.

The intent of this ordinance is to address the serious need for affordable housing in the city and the region, to communicate the importance of appropriate, quality design, and to ensure that new housing provides opportunities for all economic strata in the community. The requirements herein acknowledge the demand for affordable housing created by market rate development; the depletion of potential affordable housing sites by market-rate development; and the impact that the lack of affordable housing production has on the health, safety, and welfare of the city’s residents including its impacts on traffic, transit and related air quality impacts, and the demands placed on the regional transportation infrastructure.

36.375.020 Applicability.

This division applies to all residential development of three or more dwelling units, including residential portions of mixed-use development, in an amount as required in 36.375.050 (Inclusionary Unit Requirement), below.

36.375.030 Exemptions.

This division shall not apply to the following:

- A. A residential or mixed-use application for the project entitlements that has been deemed complete as of the effective date of this ordinance.
- B. The portion of a project located within a designated landmark building or contributing structure to a designated historic district that is retained and preserved on-site as part of a multi-family project in compliance with the Secretary of Interior's standards.
- C. A 100% affordable housing project proposing to develop units that will be deed-restricted for a period of at least 55 years.
- D. Units approved as accessory dwelling units or junior accessory dwelling units.

36.375.040 Definitions.

- A. "Affordable unit" means a dwelling unit which is affordable to an extremely low income household, very low income household, lower income household or moderate income household, as defined below.
- B. "Extremely low income household" means households whose income does not exceed thirty percent of the area median income for Los Angeles County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50106.
- C. "Inclusionary unit" means a dwelling unit within a housing development which will be reserved for sale or rent to extremely low, very low, low or moderate income households by a deed restriction recorded against the property.
- D. "Lower income household" means households whose income does not exceed eighty percent of the area median income for Los Angeles County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50079.5.
- E. "Moderate income household" means households whose income does not exceed one hundred twenty percent of the area median income for Los Angeles County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50105.
- F. "Mixed-Use Zoning District": For purposes of this division, this shall refer to any zoning district in which both commercial and residential uses are allowed.
- G. "Very low income household" means households whose income does not exceed fifty percent of the area median income for Los Angeles County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50105.

36.375.050 Inclusionary unit requirement.

- A. Amount Required: A minimum of 20 percent of the total number of dwelling units in a residential or mixed-use project, excluding any bonus units added pursuant to State Law or SPMC 36.370, shall be developed, offered to, and sold or rented to households of very low, lower, and moderate-income, at an affordable housing cost, as follows.
1. In addition to the inclusionary requirement, the project shall include replacement units for any existing affordable unit that is protected by a covenant or otherwise identified through a discretionary approval process as an affordable unit. The demolished unit shall be replaced at the same affordability level.
- B. Inclusionary Rental Units:
1. Projects with 10 or fewer units shall have the option to designate an affordable unit as extremely low, very low, lower or moderate income, provided that if the project includes two affordable units, either
 - a. both units shall be lower income; or
 - b. at least one shall be a very-low income unit and the other unit may be very low, lower, or moderate.
 2. Projects with 11 or more units shall provide 50% of required affordable units as extremely low or very low and 50% as lower income units. In case of an uneven number, one more unit shall be provided as very low.
- C. Inclusionary Ownership (For Sale) Units shall be provided at the moderate income level.
- D. Fractional Units: In the case that unit calculations result in a fractional number, the applicant shall choose one of the following options:
1. Round up to next unit and provide the unit on-site.
 2. Pay the fractional amount above the whole number as an in-lieu fee equivalent to the fraction multiplied by the in-lieu fee as established by City Council resolution. All whole number units shall be provided on-site or alternatively as allowed in 36.375.060 (Alternatives to on-site provision), below.

36.375.060 Alternatives to on-site provision.

As an alternative to developing required inclusionary units within an affected residential project, the requirements of this division may be satisfied by the following as applicable to the size of the project.

- A. For rental projects of three or four units or for any ownership project: payment of an in-lieu fee as established by City Council resolution and updated from time to

time as deemed appropriate, subject to the provisions of 36.375.110 (In-lieu fee payment and administration) below.

B. For rental projects of five or more units, the applicant may choose one of the following, subject to Planning Commission approval:

1. Provision of an equivalent number of off-site units consistent with Table A above, subject to the provisions of 36.375.100 (Deed restriction), below. The following shall apply to this alternative:
 - a. The off-site units shall be located on a property within 1,500 feet of the proposed project, or in a comparable neighborhood as determined by the planning commission.
 - b. The affordable units shall be of comparable size and quality to the market-rate units in the proposed project and subject to the relevant standards in 36.375.070 (Standards governing inclusionary units).
2. Rehabilitation/conversion of an equivalent number of existing units to affordable units consistent with Table A above, subject to the provisions of 36.375.100 (Deed restriction), below. The following shall apply to this alternative:
 - a. The acquisition and rehabilitation shall be applied to market-rate units within the city and the conversion of those units to affordable units;
 - b. Eligible Improvements. The rehabilitation of the market rate units shall improve the unit's structural integrity and livability to include improvements to the roofing, flooring, plumbing, heating, and air conditioning as applicable.
3. Dedication of land that is zoned and developable for housing, subject to city council acceptance, greater or equal to the average cost of construction of the units within the project, with the valuation subject to planning commission approval.

36.375.070 Standards governing inclusionary units.

- A. Inclusionary units shall be dispersed throughout the project;
- B. Inclusionary units shall be comparable and equivalent in size to the market-rate units in the project.
- C. The number of bedrooms in inclusionary units shall be provided in approximately the same proportion as the market rate units in the project.
- D. Inclusionary units shall be of quality and materials comparable to the market-rate units, unless it can be demonstrated to the satisfaction of the City that this is infeasible. Notwithstanding, exceptions may be made for affordable units for sale at the discretion of the planning commission;

- E. Inclusionary units shall comply with all applicable development standards, except as modified by this division.
- F. Inclusionary unit residents shall have equal access to use of all on-site amenities.
- G. Inclusionary units shall be maintained to the same standard as market rate units.
- H. Developer shall actively market the affordable units to eligible households concurrently with the market rate units. The developer shall submit a marketing plan for the Director's approval that gives preference to residents and employees of South Pasadena in the tenant selection process.
- I. Inclusionary units in a residential project shall be constructed concurrently with, or before, the construction of the market rate units. If the city approves a phased project, the required inclusionary units shall be provided proportionately within each phase of the residential project.
- J. On-site inclusionary units must be rental units in rental projects. In ownership projects, inclusionary units may be offered as either rental units or ownership units.
- K. The property owner shall record a deed restriction against the property reserving the extremely low, very low, lower, and moderate income units at the applicable affordable housing cost for a minimum of 55 years from the date of issuance of a certificate of occupancy.

36.375.080 Streamlined State Density Bonus Review

- A. Purpose: For projects including on-site inclusionary units as required herein, the following Design Incentives process offers an alternative, streamlined State Density Bonus process. Design Incentives are intended to encourage architectural designs that are well-conceived, thoughtfully detailed, consistent with the character of the city and compatible with the zoning district in which they are located.
- B. Applicability: Design Incentives may be requested for any project that provides all required inclusionary units on-site and for which a density bonus is requested pursuant to Division 36.370, provided the site is located in:
 - 1. Any mixed-use zoning district; or,
 - 2. Any multi-family residential district.
- C. Consistent Architectural Design Approach: To qualify for Design Incentives pursuant to this sub-section, the applicant shall demonstrate that the proposed project supports a clear and consistent architectural design that includes the following:
 - 1. Required Standards: The project application shall include a narrative that explains the architectural design approach and how the project meets the following standards:
 - a. Stepbacks

- i. Front and corner building façades: A minimum ten-foot setback above the third story, or above the second story for properties located on Mission Street, to reduce bulkiness and perceived height from street level;
 - ii. Side building façades: A minimum ten-foot setback above the third story, or above the second story for properties located on Mission Street, along property lines that are adjacent to a residential district with a lower density or historic property. Notwithstanding, balconies open on at least two sides may project into the setback area provided the balcony are at least five feet from the side property line;
 - iii. Rear building façades: A minimum ten-foot setback above the third story, or above the second story for properties located on Mission Street, if the proposed building is located within ten feet of the rear property line of a parcel that is directly adjacent to a residential district with a lower density.
 - iv. Setbacks may be reduced if the size of the parcel makes the setbacks infeasible or such setbacks are not consistent with the surrounding context as determined by the Director;
- b. Terraces and Balconies on properties adjacent to a single-family residential use: For properties located adjacent to a single family residential use, terraces and balconies facing the single-family residential use shall be prohibited above the ground level. Roof terraces shall be located toward the front of the building and at least 10 feet from the edge of the building facing the single-family residential use and shall provide an eight-foot high sound wall along the single-family facing elevation with a ten-foot long return on each side of the roof terrace.
- c. 360-degree architectural design: The project shall have consistent design features or patterns that render it as unique with all elevations designed at the same level of architectural detail and articulation as the front elevation,
- d. A signature architectural element that is described in the application. Some examples include but are not limited to: a signature element that identifies the building and relates to its location in the city; a courtyard or open space pattern is visible from the street; a prominent corner feature.
- e. Ground-Floor Facades: Building facades shall avoid blank walls and long expanses without variation in form and design treatment as follows:
 - i. For mixed-use projects, the ground floor of commercial street facades shall be comprised of at least 75% openings in walls such as storefront windows and doors with transparent glazing. Façade variation achieved

through form, materials and details is essential, with an emphasis on the ground-floor treatment experienced by pedestrians.

- ii. For 100% residential projects, the ground floor front façade shall include direct entrances into units and articulation that indicates separate units.

2. Encouraged Design Features: The applicant should consider incorporating the following features as appropriate to support the request for design incentives in the project application:

- a. Higher floor-to-floor height for commercial portion of mixed use project with 16-18 feet considered to be desirable
- b. Higher floor-to-ceiling heights in residential units
- c. Leveraging of additional height to reduce overall site coverage and increase open space

D. Design Incentives: Projects that demonstrate a consistent architectural design approach per Subsection C, above, shall be entitled to the following incentives, without requirement for feasibility studies or other analysis:

1. Height Increase and Height Averaging: If requested in the project application, a height increase, using measurement based on height averaging, that facilitates the provision of features per Section C, above, shall be approved with no further studies or analysis shall be required as part of the submittal as follows:
 - a. For projects in mixed-use zoning districts on Mission Street where there is a predominance of historic resources: An increase of one additional story, with an average maximum project height not to exceed 5 feet above the limit of the underlying zoning district, provided that no portion of the building may exceed 10 feet above the height limit of the underlying zoning district.
 - b. For projects in other mixed-use zoning districts: An increase of one additional story, with an average maximum project height not to exceed 15 feet above the limit of the underlying zoning district, provided that no portion of the building may exceed 20 feet above the height limit of the underlying zoning district.
 - c. For projects in multi-family residential districts: An increase of one additional story, with a maximum average height not to exceed 10 feet above the limit of the underlying zoning district provided no portion of the building may exceed 15 feet above the height limit of the underlying zoning district.

For purposes of this incentive, non-occupiable architectural projections, including elevator shafts and stairwells, shall be permitted to exceed the adjusted height limit as necessary to comply with Building Code requirements.

2. Reduced Minimum Unit Size: Notwithstanding 36.375.070, the floor area of inclusionary units may be up to 10% smaller than the market-rate units in the project.
3. Parking reduction: The applicant may request to calculate parking for the residential portion of the property at one half (.5) spaces per bedroom, with studios considered to be one-bedroom units for the purpose of this requirement. Fractional units shall be rounded up to the next whole unit.

36.375.090 Application.

- A. **Submittal.** An application for a residential or mixed-use development subject to this division shall not be deemed complete until the applicant has provided information as requested in the application that demonstrates to the satisfaction of the Director the manner in which the project shall comply with the provisions of this division.
- B. **Application information.** The application shall include:
 1. The number of market rate and affordable units.
 2. The number of extremely low, very low, lower, and moderate income units.
 3. The percentage of extremely low, very low, lower, and moderate income units in relation to the total number of affordable units.
 4. A calculation showing applicant's assumption of base density and any bonus requested
 5. Whether the applicant intends to satisfy the requirements of this division through the alternative means provided in section 36.375.060.
 6. Whether the applicant intends to take advantage of the design incentives under section 36.375.080.
 7. Acknowledgement of the standard conditions of approval.
 8. Any other information deemed necessary by the Director.

36.375.100 Conditions of Approval.

The following shall be required as standard conditions of approval for all projects subject to the requirements of this Division.

- A. **Deed Restriction.** Prior to issuance of a building permit for a project meeting the requirements of this section, the project applicant shall:
 1. Submit a deed restriction or other legal instruments setting forth the obligation of the applicant under this division for city review and approval.
 2. The deed restriction shall include:

- a. A description of the household income group to be accommodated by the housing development and the standards for determining the corresponding affordable rent or affordable housing cost;
 - b. The location, unit sizes (square feet), and number of bedrooms of affordable units;
 - c. Tenure of use restrictions of at least fifty-five years for affordable units and, as applicable, inclusionary units;
 - d. A prohibition on any short-term rentals whereby a residence or a portion of a residence is rented to a tenant for a period of less than thirty days;
 - e. A clause allowing for the recovery of any legal costs incurred in any action taken to enforce compliance with the inclusionary housing agreement;
 - f. Other provisions to ensure implementation and compliance with this chapter.
3. Record the deed restriction in the county recorder's office, following approval as to form by the city attorney that confirms that the terms and conditions of the inclusionary agreement in compliance with applicable state law; such deed restriction shall run with the land which is to be developed, and shall be binding upon the successor(s)-in-interest of the inclusionary permit applicant.

B. For-sale housing units. In the case of for-sale housing developments in which the applicant opts to provide the affordable unit(s) as for-sale unit(s), in addition to the requirements of subsection 36.375.100A above, the deed restriction shall provide for the following conditions governing the initial sale and use of affordable units during the applicable use restriction period:

1. Affordable units shall, upon initial sale, be sold to eligible moderate income households at an affordable housing cost;
2. Purchasers of affordable units shall be required to occupy the unit except with approval from the city. Evidence must be presented to the city that the owner is unable to occupy the unit due to illness or incapacity. In such cases, the unit shall be rented to a person within the same household income category;
3. A resale restriction shall be recorded against all affordable units restricting the price at which the unit may be resold during the applicable use restriction period. The agreement shall specify that subsequent owners must meet the same qualifications as the original owner and must be pre-approved for purchase by the city. The agreement shall also grant the city the right-of-first-refusal to purchase an affordable unit each time it is sold.
4. The city will enforce an equity sharing agreement which will require that, upon resale, the seller of the unit will retain the value of any improvements,

the down payment, and the seller's proportionate share of appreciation, if any. For purposes of this section, the city's initial subsidy will be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the income restricted household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the seller's initial market value, then the value at the time of the resale will be used as the initial market value. The City's proportionate share of appreciation will be equal to the ratio of the city's initial subsidy to the fair market value of the home at the time of the initial sale.

5. Provisions requiring that homeowner association (HOA) fees be waived or reduced for owners of affordable units such that the owner does not pay more than 30% of their income on housing, including mortgage payments and HOA dues.

C. Rental housing units. In the case of rental housing developments, or for-sale housing developments in which the applicant opts to provide the affordable unit(s) as rental unit(s), in addition to the requirements of subsection 36.375.100A above, the following conditions of approval shall be required to govern the use of the affordable units during the applicable use restriction period:

1. Affordable units only to be let to qualified residents at the rent level applicable to Los Angeles County as published and periodically updated by the State Department of Housing and Community Development;
2. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining affordable units for qualified tenants;
3. Provisions requiring owners to annually verify tenant incomes and maintain books and records to demonstrate compliance with this chapter and to make such books and records available to the City upon the City's request; and
4. Provisions requiring owners to pay an annual monitoring fee and submit an annual report to the city by December 31st, which includes the name, address, and income of each person occupying affordable units, and which identifies the bedroom size and monthly rent of each affordable unit.

D. Schedule. Prior to issuance of a building permit for a project meeting the requirements of this division through off-site construction or rehabilitation of existing units, the project applicant shall submit a schedule for review and approval by the director, detailing the timeline for completion and occupancy of affordable units. The schedule shall specify that the units must be completed prior to issuance of a certificate of occupancy for the market-rate project.

36.375.110 In-lieu Fee Payment and Administration

Payment of an in-lieu fee as an alternative to on-site provision of units pursuant to 36.375.060.A (Alternatives to On-site Provision) or for a fractional unit pursuant to 36.275.050.D (Fractional Units), above, shall comply with this section.

- A. The City Council shall establish the amount of the in-lieu fee by resolution, which shall be reviewed and adjusted annually prior to the succeeding fiscal year.
- B. The in-lieu fee shall be established in an amount that is equivalent to the cost of providing a comparable unit for each unit that would have been provided in the project based on the requirements of this section.
- C. Until such time as the City Council establishes a fee pursuant to (A), the amount of the in lieu fee shall be considered on a case-by-case basis as approved by the Planning Commission, consistent with B, above. Applicant shall submit a cost estimate and shall pay an administrative fee for the City's review and confirmation of the comparable unit cost.
- D. The amount to be paid by the applicant shall be calculated based on the affordable housing in-lieu fee that is in effect at the time that the fee is paid to the City.
- E. The affordable housing in-lieu fee shall be paid in full to the City prior to the issuance of any building permit or tree removal permit for the project, and receipt shall be confirmed by the Building Official.
- F. Fees collected in compliance with this Section shall be deposited in a reserve account separate from the General Fund to be used only for development or maintenance of affordable housing, including administrative costs related to monitoring affordable housing units for compliance with their deed-restricted use.
 - 1. Alternatively, by resolution of the City Council, fee payments may be deposited into a regional Affordable Housing Trust Fund (AHTF) administered cooperatively by San Gabriel Valley jurisdictions, in order to leverage State, Federal and other sources of funding to increase construction of affordable housing units in the region. Projects in the City would be eligible to apply for regional AHTF funding per the rules and process established for its administration.
- G. Payment of an affordable housing in-lieu fee pursuant to this Section shall not be considered provision of affordable housing units for purposes of determining whether the multi-family project qualifies for a density bonus pursuant to Government Code Section 65915.
- H. Appeals. An applicant may appeal the in-lieu fee under the protest provisions of the Mitigation Fee Act pursuant to Government Code section 66020. The appeal will be processed pursuant to Division 36.610 of this code.

SECTION 2. CEQA. The City Council hereby finds that the proposed Code amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines § 15061(b)(3), which states the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It may be seen with certainty that

there is no possibility this Zoning Code Amendment may have a significant effect on the environment.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, or otherwise not in force or effect, such decision shall not affect the validity, force, or effect, of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or otherwise not in force or effect.

SECTION 4. Authority. This ordinance is enacted pursuant to Article XI, Section 7, of the California Constitution, and in compliance with Government Code section 36937.

SECTION 5. Publication and Effective Date. Upon adoption of this Urgency Ordinance by no less than four-fifths (4/5) vote of the Council, the Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in newspaper of general circulation within fifteen (15) days after its adoption. This Urgency Ordinance shall become effective immediately upon its adoption.


PASSED AND ADOPTED by the City Council of the City of South Pasadena, State of California, on April 7, 2021 by the following vote:


AYES: Primuth, Zneimer, Cacciotti, Mayor Mahmud

NOES: None


ABSENT: Donovan

Attest:

DocuSigned by:

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Maria E. Ayala, City Clerk

DocuSigned by:

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Diana Mahmud, Mayor

Approved as to form:

DocuSigned by:

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Andrew L. Jared, Assitant City Attorney